

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JAMES COY MIDDLETON,

Petitioner,

VS.

NATHANIEL QUARTERMAN,

Respondent.

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CIVIL ACTION NO. C-09-135


**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
TO GRANT RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On August 12, 2009, United States Magistrate Judge Brian L. Owsley signed a Memorandum and Recommendation recommending that respondent's motion for summary judgment (D.E. 10) be granted and that petitioner's habeas petition (D.E. 1) be dismissed without prejudice as unexhausted. The Memorandum and Recommendation recommended further that petitioner be denied a certificate of appealability. A copy of the Memorandum and Recommendation was mailed to petitioner with a card to be returned indicating his receipt of the mailing. The card has not been returned by petitioner nor has the mailing been returned by the U.S. Post Office as undeliverable. Therefore, seeing no objection to this recommendation by either party and having now reviewed the recommendation, this Court hereby adopts as its own the Memorandum and Recommendation as the decision of the Court. Accordingly, it is

ORDERED that respondent's motion for summary judgment is granted and petitioner's habeas petition is dismissed without prejudice as unexhausted.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 27th day of October, 2009.



Janis Graham Jack
United States District Judge